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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,879	01/21/2004	Nafca Bishara	MP0302	8273
26703 7590 02/16/2010 HARNESS, DICKEY & PIERCE P.L.C. 5445 CORPORATE DRIVE SUITE 200 TROY, MI 48098				
EXAMINER				
FOUD, HICHAM B				
ART UNIT		PAPER NUMBER		
2467				
MAIL DATE		DELIVERY MODE		
02/16/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/761,879

Applicant(s)

BISHARA ET AL.

Examiner

HICHAM B. FOUD

Art Unit

2467

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Hong Cho/
Primary Examiner, Art Unit 2467

Continuation of 11, does NOT place the application in condition for allowance because: The applicant is arguing the 112 2nd rejection. However, the examiner disagrees and maintains that claims 4-19, 27-42, 50-65 and 69-84 are vague and indefinite. Claim 4 recites the determination whether no request to approve the association has been sent. However, this limitation is already recited in claim 1 (see claim 1 lines 8-11), that is why a request is sent. Moreover, claims 4-19, 27-42, 50-65 and 69-84 are vague and indefinite because of the ambiguity of the claimed language used, which creates confusion. It is clear from Fig.2 that the use of "FLAG" is the one controlling the approved or the unapproved of the association. However, the claimed language does not reflect the clear and direct steps of the Figure, but instead uses vague language that renders the claims indefinite. Therefore, it is not known the metes and the bounds of the claimed invention. Similar issues occur in the correspondent dependant claims of the other sets. Therefore, the rejection is maintained.

In pages 43-44 of the Remarks, the applicant repeatedly argues that Hendel does not teach the limitations of claim 1. Examiner respectfully disagrees; the features of claim 1 are clearly met by Hendel. Hendel explicitly designates the limitations of claim 1. Hendel does not choose to use his own lexicography to designate the limitations of claim 1. However, the steps performed by Hendel are the same regardless to the terminology used. Hendel discloses an apparatus comprising: a plurality of network ports (see Fig.4 elements E1, E2, E3); a central processing unit (CPU) interface (see Fig.4 element 460; CPS); and a controller (see Fig.4 element 410) to send, to the CPU interface, a request to approve an association between one of the plurality of network ports and a source media access control (MAC) address of a packet received on the one of the plurality of network ports (see col.11 lines 50-59; wherein the learning of new/unknown source address arriving at port E1 triggers the sending of notification (claimed request) to the CPS 460) when no request to approve the association between the one of the plurality of network ports and the source MAC address has been sent to the CPU interface (see col.11 lines 50-59; since the new/unknown source address arriving at port E1 triggers the sending of notification (claimed request) to the CPS 460; it is clear that there is no prior notification is being sent because the source address is new/unknown), and send, to the CPU interface, the request when an approval for an association between the source MAC address and a different one of the plurality of network ports (see col.11 lines 50-59; wherein the learning of source address that already exists with different port entry triggers the sending of notification to the CPS 460 (claimed CPU interface)) has been received from the CPU interface (see also col.7 lines 57-59; CPS serves to add entries and associated data to the forwarding memories in the element 410 (claimed controller) and also col.8 lines 1, CPS (claimed CPU interface) enters and manages type 2 (MAC address) in the forwarding memories in the element 410 (claimed controller); therefore, it must be two way communication between CPS (claimed CPU interface) and the element 410 (claimed controller) to add entries in the forwarding memories in the element 410 (claimed controller)). Thus, the limitations of claim 1 are very broad and if a claim is subject to more than one interpretation, at least one of which would render the claim unpatentable over the prior art, the examiner should reject the claim over the prior art based on the interpretation of the claim that renders the prior art applicable. Ex parte Ionescu, 222 USPQ 537 (Bd. Pat. App. & Inter. 1984). In re Wilson, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). Therefore, claims are given their broadest reasonable interpretation The Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) because although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)..